

**FREEDOM OF INFORMATION COMMISSION STATEMENT ON
HOUSE BILL 6664, AN ACT MANAGING WASTE AND
CREATING A WASTE AUTHORITY.**

February 27, 2023

The Freedom of Information (“FOI”) Commission does not oppose House Bill 6664 in principal, but is concerned with certain language in the bill. Specifically, with respect to the disclosure of records concerning the packaging stewardship plan and program, section 1 (lines 595-603) of the proposal provides that:

[t]he Commissioner of Energy and Environmental Protection shall not require the disclosure of any information that the commissioner finds to be confidential information. For purposes of this subsection, "confidential information" means any information that if made public would divulge competitive business information, methods or processes entitled to protection as trade secrets of such responsible party or stewardship organization or information that would reasonably hinder the responsible party or stewardship organization's competitive advantage in the marketplace.

The Commission believes that the language in section 1 (lines 595-603) is unnecessary because Section 1-210(b)(5) of the FOI Act already permits a public agency to withhold from disclosure:

(A) *Trade secrets*, which for purposes of the Freedom of Information Act, are defined as information, including formulas, patterns, compilations, programs, devices, methods, techniques, processes, drawings, cost data, customer lists, film or television scripts or detailed production budgets that (i) derive independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from their disclosure or use, and (ii) are the subject of efforts that are reasonable under the circumstances to maintain secrecy; and

(B) *Commercial or financial information* given in confidence, not required by statute.... [Emphasis added].

At the very least, the Commission suggests that the language in section 1 (lines 595-603) of the bill track the language in Section 1-210(b)(5)(A) and (B) of the FOI Act. Additionally, the Commission requests that the language in section 1 (lines 595-603) of the bill be amended to make clear that the Commissioner of Energy and Environmental Protection’s determination is reviewable by the FOI Commission.

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